

Message Text

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ACTION OES-07

INFO OCT-01 EUR-12 ISO-00 ACDA-12 CIAE-00 INR-10 IO-13
L-03 NSAE-00 NSC-05 EB-08 NRC-05 SOE-02 DODE-00
SS-15 SP-02 CEQ-01 AF-10 ARA-10 EA-10 NEA-11
PM-05 /142 W

-----039949 191254Z /43

R 181509Z MAY 78
FM AMEMBASSY VIENNA
TO SECSTATE WASHDC 6432
INFO AMEMBASSY BRUSSELS
AMEMBASSY BONN
AMEMBASSY COPENHAGEN
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY THE HAGUE
USDOEHQ WASHDC
USDOEHQ GERMANTOWN

C O N F I D E N T I A L SECTION 01 OF 02 VIENNA 04572

USIAEA, USEEC

DEPT PASS IO/SCT
DOE PASS AMMONS, IA

E.O. 11652: GDS
TAGS: IAEA, TECH, PARM, MNUC, ENRG
SUBJECT: PHYSICAL SECURITY ASSURANCES

REF: STATE 107766

1. AS DEPT AND OTHER INTERESTED WASHINGTON AGENCIES ARE
AWARE, TRANSFERS OF U.S.-SUPPLIED MATERIALS AND FACILITIES
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THROUGH IAEA TO MEMBER STATES PURSUANT TO THE U.S./IAEA
AGREEMENT FOR COOPERATION CAN TAKE PLACE ONLY WHEN THERE
IS AN APPROPRIATE TRILATERAL SUPPLY AGREEMENT (OR TRI-
LATERAL SUPPLEMENTAL CONTRACT PURSUANT TO A SUPPLY AGREE-
MENT) IN FORCE WITH THE GOVERNMENT OF THE RECIPIENT
MEMBER STATE, UNLESS, FOR EXAMPLE, IN THE CASE OF CERTAIN
SMALL QUANTITIES PURCHASED BY IAEA AND MADE AVAILABLE ON A

LOAN BASIS UNDER THE IAEA NUCLEAR DATA PROGRAM, IAEA RETAINS TITLE TO THE MATERIAL IN QUESTION. EVEN IN THE LATTER CASES, HOWEVER, IAEA REQUIRES A RESEARCH CONTRACT OR AN EXCHANGE OF LETTERS WITH THE RECIPIENT INSTITUTE WHERE THE RESEARCH IS PERFORMED CONTAINING CERTAIN CONDITIONS, SUCH AS A PEACEFUL USES GUARANTEE, ETC.

2. IN THE MORE RECENT SUCH TRILATERAL SUPPLY AGREEMENTS (OR QUADRILATERAL IN THE ONE CASE OF ARGENTINA-PERU) TO WHICH THE U.S. IS ONE OF THE PARTIES, THERE IS A PROVISION REQUIRING THE RECIPIENT STATE TO MAINTAIN PHYSICAL PROTECTION MEASURES TO ACHIEVE, AS A MINIMUM, PROTECTION COMPARABLE TO THAT SET FORTH IN AGENCY DOCUMENT INFCIRC/225/REV.1. ACCORDINGLY, IN THESE CASES, THE GOVERNMENT OF THE RECIPIENT STATE HAS ALREADY GIVEN "WRITTEN ASSURANCES THAT ADEQUATE PHYSICAL SECURITY MEASURES WILL BE MAINTAINED," BY VIRTUE OF ITS SIGNATURE TO THE AGREEMENT.

3. THERE ARE OLDER TRILATERAL SUPPLY AGREEMENTS TO WHICH THE U.S. IS A PARTY WHICH DO NOT RPT NOT CONTAIN ANY PROVISIONS RELATING TO PHYSICAL PROTECTION. IN SUCH CASES, THE IAEA HAS NO RPT NO LEGAL BASIS UPON WHICH TO SEEK ASSURANCES FROM RECIPIENT GOVERNMENTS THAT "ADEQUATE PHYSICAL SECURITY MEASURES WILL BE MAINTAINED." ACCORDINGLY, IAEA LEGAL STAFF BELIEVES THAT EITHER (A) THE RELEVANT SUPPLY AGREEMENT SHOULD BE AMENDED TO INCLUDE

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SUCH A PROVISION (WHICH WILL BE TIME CONSUMING, SINCE IT MIGHT REQUIRE BOARD OF GOVERNORS APPROVAL) OR (B) THE U.S. SHOULD UNDERTAKE TO SEEK SUCH ASSURANCES ON A BILATERAL BASIS FROM THE GOVERNMENT OF THE RECIPIENT COUNTRY CONCERNED, AS, IN FACT, THE U.S. HAS DONE IN RECENT CASES INVOLVING GREECE AND ROMANIA. THE IAEA IS, OF COURSE, PREPARED TO CONSIDER ASSISTING IN THIS EFFORT IF REQUESTED TO DO SO BY THE U.S. ON A CASE-BY-CASE BASIS.

4. RE THE "ASSURANCE LETTER" ASKING IAEA TO ASSURE THAT PARTICULAR TRANSFERS ARE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THE U.S./IAEA AGREEMENT FOR COOPERATION, IAEA LEGAL STAFF HAVE RELUCTANTLY BEEN WILLING TO PROVIDE SUCH LETTERS, BUT THEY MAINTAIN THAT, IF THE MATERIAL OR FACILITY WHICH IS THE SUBJECT OF AN EXPORT LICENSE REQUEST IS IDENTIFIED AS, OR OTHERWISE KNOWN TO BE, THE SAME MATERIAL OR FACILITY REFERRED TO IN A PARTICULAR SUPPLY AGREEMENT AND IS WITHIN THE SPECIFICATIONS SET FORTH IN THAT AGREEMENT, THE IAEA, BY ITS SIGNATURE OF THE SUPPLY AGREEMENT IN QUESTION, HAS ALREADY PROVIDED THE NECESSARY ASSURANCE, SINCE ALL SUCH SUPPLY AGREEMENTS ARE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THE U.S./

IAEA AGREEMENT FOR COOPERATION. MOREOVER, THE GOVERNMENTS OF THE RECIPIENT MEMBER STATES ARE ALSO PARTIES TO SUCH SUPPLY AGREEMENTS AND, ACCORDINGLY, THEY LIKEWISE HAVE UNDERTAKEN BINDING COMMITMENTS THAT ITEMS TRANSFERRED PURSUANT TO SUCH SUPPLY AGREEMENTS ARE SUBJECT TO ALL THE TERMS OF THE U.S./IAEA AGREEMENT FOR COOPERATION. UNLESS THERE IS SOME DOUBT, THEREFORE, AS TO WHETHER THE MATERIAL OR FACILITY IN QUESTION IS THE SAME MATERIAL OR FACILITY REFERRED TO IN A PARTICULAR SUPPLY AGREEMENT, THE IAEA LEGAL STAFF MAINTAINS THAT SEEKING SUCH ADDITIONAL ASSURANCES IS TANTAMOUNT TO QUESTIONING THE INTEGRITY AND

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VALIDITY OF THE DIRECTOR GENERAL'S SIGNATURE ON THE SUPPLY AGREEMENT IN QUESTION. THE IAEA LEGAL STAFF ALSO POINTS OUT THAT, IN CONTRAST TO U.S. BILATERAL AGREEMENTS FOR COOPERATION WITH PARTICULAR COUNTRIES, WHICH NORMALLY PERMIT TRANSFERS OF ITEMS TO PERSONS UNDER THE JURISDICTION OF THE GOVERNMENTS OF SUCH COUNTRIES, THE IAEA, IN ACCORDANCE WITH ITS STATUTE, CAN TRANSFER SUCH ITEMS ONLY TO "MEMBERS OR GROUPS OF MEMBERS." ALL SUCH TRANSFERS,

THEREFORE, ARE TO GOVERNMENTS, AND EVEN IN CASES WHERE THE
ULTIMATE RECIPIENT IS A UNIVERSITY OR OTHER INSTITUTION OR
PERSON IN A COUNTRY, THE TRANSFER ACTUALLY IS TO THE
GOVERNMENT OF THE COUNTRY CONCERNED, AND IT IS THAT GOVERN-
MENT WHICH HAS UNDERTAKEN THE OBLIGATIONS SPECIFIED IN
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THE SUPPLY AGREEMENT INVOLVED. IAEA LEGAL STAFF, THERE-
FORE, CONSIDER THE "ASSURANCES LETTER" REQUIRED BY THE
U.S. AS LEGALLY UNNECESSARY, ALTHOUGH, AS INDICATED ABOVE,
THEY WILL CONTINUE TO PROVIDE SUCH LETTERS IF REQUESTED
BY THE U.S. LABOWITZ

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PHYSICAL SECURITY, FISSIONABLE MATERIALS TRANSFER
Control Number: n/a
Copy: SINGLE
Draft Date: 18 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978VIENNA04572
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780211-0338
Format: TEL
From: VIENNA USIAEA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780542/aaaabjrn.tel
Line Count: 186
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 1e588c9a-c288-dd11-92da-001cc4696bcc
Office: ACTION OES
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 STATE 107766
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 13 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2644765
Secure: OPEN
Status: NATIVE
Subject: PHYSICAL SECURITY ASSURANCES
TAGS: TECH, PARM, MNUC, ENRG, US, IAEA
To: STATE USEEC
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/1e588c9a-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014